

REMARKS/ARGUMENTS

The Advisory Action mailed March 10, 2006 has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Status of the Claims

Claims 1-4, 9-24, 26, 30-32, 52, and 63-85, 87-91 are now pending. No claims stand allowed.

All of the pending claims remain unchanged, but the listing of the claims is presented for the Examiner's convenience.

The 35 U.S.C. §103 Rejection

Claims 1-4, 9-24, 26, 30-32, 52, 63-85 and 87-91 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Brendel et al. (U.S. Pat. No. 5,774,660) in view of Lamarque et al. (U.S. Pat. No. 6,690,651), among which claims 1, 9, 13, 17, 20, 30, 63, 66, 68-69, 71, 74, 76, 78, 81 and 83 are independent claims. This rejection is respectfully traversed.

According to M.P.E.P. §2143,

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable

expectation of success must both be found in the prior art, not in the applicant's disclosure.

Furthermore, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Claim 1 defines a backup server for enabling a data communications network to recover from a local server failure, the data communications network including a network access server (NAS) for coupling a call placed from a call-in user by calling-in to the data communications network, the NAS having a memory associated therewith. The claimed backup server comprises (a) an information packet receiver responsive to the local server failure, the information packet receiver receiving from the memory associated with the NAS an information packet associated with an ongoing call placed by the call-in user via the NAS, the information packet containing call information of the ongoing call for maintaining connection of the ongoing call if the local server fails, and (b) a parser for reconstructing the call information from the information packet such that the backup server maintains the ongoing call to the data communications network, as recited in claim 1.

In the Advisory Action, the Examiner alleges that “[t]he Applicant’s argument is not persuasive because this is not commensurate with the scope of the claim. There is no limitation in the claim that indicate “a user’s placing request by calling in.”

However, it is the Examiner who uses the term “request” even if the claim language does not contain the word “request” at all. Claim 1 only recites “a call placed from a call-in user” and “an on-going call placed by the call-in user.” However, the Examiner alleges follows:

Brendel discloses ... a network access server (70' fig. 19) coupling a request placed from a user (client 10 fig. 8) to the data communication network. (See the Final Office Action, page 3)

Brendel does not specifically disclose a user placing a request by calling in. However, Lamarque discloses a user placing a request by calling in [using a user (122 fig. 1) to initiate a call at a terminal to communicate with the servers at networks, see fig. 1 col. 3 line 22 to col. 4 line 24]. (See the Final Office Action, page 4)

Thus, since there is no limitation in the claim that indicates “a user’s placing request by calling in,” where the claim recites limitations of “a call placed from a call-in user” or “an on-going call placed by the call-in user,” neither Brendel nor Lamarque, which only discloses “coupling a request placed from a user” and “a user placing a request by calling in,” teaches coupling a call placed from a call-in user as recited in claim 1.

For the reasons set forth above, the Applicant respectfully requests the rejections based on Brendel and Lamarque be withdrawn.

The following is Applicant’s additional response to the Examiner’s reasons for maintaining the rejections:

The Examiner further alleges, in the Advisory Action, as follows:

... it would have been obvious to one of ordinary skill in the art at the time of the invention was made to utilize Lamarque's teachings into the computer system of Brendel to request data information through a network because it would have enabled user to bypass long distance carriers and their permanent usage rates and to run voice traffic over the internet.

As the Applicant discussed in detail in the previous response, and the Examiner noted in the Advisory Action, Brendel's request for data information is not a call-in user's call to NAS. In Brendel, when the client browser 10 sends a request, the client browser 10 would place a local call (i.e., dial up) to a nearby network access point to connect to an Internet service provider (ISP). Then, the user's request is communicated to the destination (the web site 144, or the servers) over the Internet 66 through internet connections 142, 148, using data packets (see FIG. 19 of Brendel). That is, data-over-IP is already done in Brendel. Thus, first of all, Brendel's system does not use a long distance carrier. Since Brendel' is not using a long distance carrier to request data information, Lamarque's alleged motivation "to bypass long distance carriers and their permanent usage rates" does not provide any advantages or desirability to modify Brendel's system as alleged.

In the claimed invention, the NAS couples a call, not a request, placed from a call-in user to the data communication network. That is, the user places a call to the NAS by calling in. On the other hand, as discussed in the previous response, if Brendel should be modified by Lamarque's teaching as the Examiner alleges, the client 10 must become a call-in user placing a call, not a request, via the backup load balancer 70' (the alleged NAS) to the communication network. Thus, in Brandle-modified-by-Lamarque, the

client 10 need to place a call to the backup load balancer 70' by calling-in, i.e., make a long distance call to the web site 144, which may be located anywhere in the world. Thus, the alleged modification would cost Brendel's client 10 charges for a long distance call to the backup load balancer 70' in order to send a request to the web site 144. Such a modified system is costly, and the resulting system still does not yield the claimed invention as discussed in the Applicant's previous response. In addition, since Lamarque's teaching is not making a long distance call and running voice traffic using Internet for a flat monthly Internet access fee (column 1, lines 28-29 thereof), Lamarque teaches away from modifying the client 10 into a call-in user making a long distance call to the backup load balancer 70'.

The Examiner further alleges that "Applicant obviously attacks references individually without taking account into consideration based on the teaching of combination of references." However, this allegation is incorrect. The Applicant has argued not only explaining that individual references do not disclose the claimed elements, but also rebutted the combination of references by showing the lack of motivation or desirability of the alleged combination, and also showing that the allegedly combined system would change the principle of operation of the prior art invention being modified, or otherwise would not yield the claimed invention (see, for example, page 24 and 26 of the Applicant's previous response).

Consequently, Brendel, whether considered alone or combined with teaching of Lamarque, does not teach or suggest the claimed backup server as recited in claim 1.

Other independent claims 9, 13, 17, 20, 30, 63, 66, 68-69, 71, 74, 76, 78, 81 and 83 includes, among others, substantially the same distinctive features regarding the NAS and the information packet, as discussed above. Accordingly, it is respectfully requested that the rejection of claims based on Brendel and Lamarque be withdrawn.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Dependent Claims

Claims 2-4 and 85 depend from claim 1, claims 10-12 and 87 depend from claim 9, claims 14-16 and 88 depend from claim 13, claims 18-19, 52 and 89 depend from claim 17, claims 21-24, 26 and 90 depend from claim 20, claims 31-32 and 91 depend from claim 30, claims 64-65 depend from claim 63, claim 67 depends from claim 66, claim 70 depends from claim 69, claims 72-73 depend from claim 71, claim 75 depends from claim 74, claim 77 depends from claim 76, claims 79-80 depend from claim 78, claim 82 depends from claim 81, and claim 84 depends from claim 84, and thus include the limitations of respective independent claims. The argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable at least for the same reasons.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Conclusion

It is believed that this Response places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

Request for Interview

Applicants respectfully request an interview to expedite the prosecution of this application. Submitted herewith is an Applicant Initiated Interview Request Form. The Examiner is invited to call the undersigned attorney at the number indicated below to schedule a telephonic interview to discuss the matter.

The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-1698.

Respectfully submitted,
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